



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2004

Mr. Ignacio Perez
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2004-7416

Dear Mr. Perez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208288.

The City of McAllen (the "city") received a request for information regarding city fees and utility bills sent to a specific city commissioner. You state that you are providing the requestor with most of the requested information. You claim, however, that the commissioner's home address is excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 182.052 of the Utilities Code provides in relevant part:

- (a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, if the customer requests that the government-operated utility keep the information confidential.

(b) A customer may request confidentiality by delivering to the government-operated utility an appropriately marked form provided under Subsection (c)(3) or any other written request for confidentiality.

(c) A government-operated utility shall include with a bill sent to each customer:

(1) a notice of the customer's right to request confidentiality under this subchapter;

(2) a statement of the amount of any fee applicable to the request; and

(3) a form by which the customer may request confidentiality by marking an appropriate box on the form and returning it to the government-operated utility.

(d) A customer may rescind a request for confidentiality by providing the government-operated utility written permission to disclose personal information.

Util. Code §182.052(a)-(d). "Personal information" under section 182.052(a) means an individual's address, telephone number, or social security number. Util. Code § 182.051(4). Water, sewer, and garbage services are included in the scope of utility services covered by section 182.052. Util. Code § 182.051(3). The information at issue is the home address of a customer of a government-operated utility. In order to request confidentiality for this information under section 182.052 of the Utilities Code, a customer must deliver an appropriately marked form or any other written request to the government-operated utility. *See* Util. Code §182.052(b). You do not inform us, and the submitted documents do not reflect, whether the commissioner complied with section 182.052(b) prior to the date the city received the present request. Therefore, if the commissioner timely complied with section 182.052(b), we determine that the city must withhold the marked address under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code.¹

To the extent the address is not confidential under section 182.052, we now address your claim under section 552.117. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this

¹ We note that none of the exceptions to confidentiality listed in section 182.054 appear to apply in this instance.

information be kept confidential under section 552.024. Gov't Code § 552.117. We note, however, that the protections of section 552.117 only apply to information that the governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in the hands of their employer); *see also* Gov't Code § 552.024 (establishing election process for Gov't Code § 552.117). In this instance, the submitted information is held by the city as a utility provider, not an employer. Consequently, we find that the commissioner's home address may not be withheld under section 552.117(a)(1).

In summary, you must withhold the commissioner's home address if he requested that this information remain confidential prior to the date the city received the instant request for information pursuant to section 552.101 in conjunction with section 182.052 of the Utilities Code. If the commissioner did not timely request that this information remain confidential, the city must release this information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 208288

Enc. Submitted documents

c: Ms. Patsy M. Rogers
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(w/o enclosures)